

REMARKS

Pursuant to 37 CFR 1.57(a), Applicant respectfully requests the Examiner to insert Figure 2 into the present application. Figure 2 was inadvertently omitted from the present application and is completely contained in U.S. Patent Application Serial No. 10/055,683, which has issued as U.S. Patent No. 6,722,096. A copy of the '683 application is attached, as filed. Figure 2 is also labeled as Figure 2 in the '683 application. Furthermore, the present application is a divisional of the '683 application. The present application includes a claim of priority to the '683 application under 37 CFR 1.78, which was set forth in a Preliminary Amendment that was filed on the same day as the present application. Thus, due to the claim of priority, Figure 2, which was inadvertently omitted upon filing, is effectively incorporated by reference into the present application. As such, no new matter is introduced into the present application.

Applicant has previously taken steps to include Figure 2 in the present application. Applicant received a Notice of Omitted Items, dated June 1, 2004, stemming from the omission of Figure 2, since Figure 2 was described in the Description of the Drawings section of the present application and no other drawings were filed with the present application that were labeled Figure 2. Applicant was given three options in the Notice of Omitted Items: (1) to contend that the omitted Figure 2 was in fact deposited with the U.S. Patent and Trademark Office (USPTO), which it was not, (2) to file the omitted Figure 2 and accept the date that Figure 2 was filed in the USPTO as the filing date of the present application, or (3) to ignore the Notice of Omitted Items and accept the present application as filed.

Applicant timely filed a Response to the Notice of Omitted Items, dated July 23, 2004. All three options were unacceptable to the Applicant, and Applicant requested that Figure 2 be added to the present application and that the original filing date of March 16, 2004 be accorded to the present application. Applicant argued that since Figure 2 was part of a prior application from which the declaration was supplied under Box 5b, and since the present application is a divisional of that prior application, Figure 2 was considered part of the disclosure of the present application at the time of filing of the present application. The USPTO classified Applicant's Response to the Notice of Omitted Items as a petition. The Office of Petitions responded that Applicant's course of

U.S.S.N: 10/801,236

IN THE DRAWINGS:

Please add Figure 2, which is attached herewith and which was inadvertently omitted, between the existing Figures 1 and 3.

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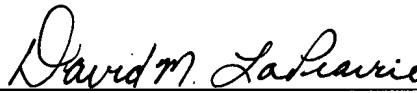
action may be proper in practice before the USPTO through the filing of a preliminary amendment. However, the Office of Petitions noted that the Petition was not necessary, and subsequently dismissed the Petition. As such, the Applicant is filing this Second Preliminary Amendment, as suggested by the Office of Petitions and in response to the dismissal of the Petition. Should the Examiner have any questions, please contact the undersigned attorney.

The Commissioner is authorized to charge our deposit account no. 08-2789 for any additional fees or credit the account for any overpayment.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

Date: January 7, 2005



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CERTIFICATE OF MAILING

I hereby certify that the enclosed **PRELIMINARY AMENDMENT** is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on **January 7, 2005**.



Melissa S. Dadisman